

FIRST NOTICE OF COMMENT PERIOD

LSA Document #09-493

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING THE AIR PERMIT REVIEW RULES:
NEAR-TERM****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2](#) that would streamline, consistent with federal requirements, Indiana's air permit review rules. This rulemaking is part of an initiative (Article 2 Initiative) that proposes to amend [326 IAC 2](#) and any related rules in Title 326 to improve the efficiency of issuing permits. Amendments contemplated as part of this rulemaking are those that can be completed in an expeditious manner. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 2](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

A key function of IDEM's Office of Air Quality is to manage Indiana's air permitting program. A priority of the department is to improve the process of reviewing air permit applications and issuing air permits. This rulemaking is part of a proposed initiative consisting of several rulemakings affecting [326 IAC 2](#) and other rules in Title 326 that relate to issuing air permits. The goal of the Article 2 Initiative is to achieve an efficient permitting process that continues to protect the environment, is less burdensome for the regulated community and benefits the citizens of Indiana while ensuring that IDEM's Office of Air Quality permitting resources are being used effectively.

IDEM is currently working on two other rulemakings in Article 2, LSA Document # 07-372 (Development of Amendments to Rules Concerning Corrections and Clarifications to Permit Rules), which includes revisions to the Article 2 rules identified by the U.S. EPA and LSA Document #09-492 (Development of Amendments to Rules Concerning the Air Permit Review Rules: Long-Term), which will address amendments requiring a longer rulemaking timeframe.

In preparation for the Article 2 initiative, IDEM conducted an internal survey to identify potential amendments to [326 IAC 2](#) that would improve the air permit review process including clarifications, additions, deletions, and correction of consistency problems. The results of the survey were then classified into various tasks based on the complexity of the issue.

In this rulemaking, IDEM proposes to amend existing rule language based on issues identified in the internal survey and during this public comment period. Amendments contemplated as part of this rulemaking are those that can be adopted in an expeditious manner. Examples of categories of changes being considered as part of this rulemaking include the following:

- (1) Consolidating or revising definitions of the same term or similar terms to ensure consistency between rules. For example, currently there are four different definitions for the term "potential to emit".
- (2) Adding definitions for terms used in [326 IAC 2](#) that currently are not defined. Article 2 currently has different requirements for environmentally significant changes to monitoring but does not define the term "environmentally significant".
- (3) Restructuring rule language to clarify applicability.
- (4) Revising applicability language to allow for a notice only change, an administrative amendment, a minor revision, or minor modification for a change that is clearly not significant. This would include changes to clarify when the addition of a new or revised federal requirement to permits can be accomplished through an administrative amendment, a minor revision, or a minor modification.
- (5) Deleting rule language that is redundant or overlaps other rule requirements. For example, source specific operating agreements ([326 IAC 2-9](#)) include applicable requirements from other sections of Title 326.

Amendments that will likely require a longer rulemaking timeframe will be addressed in LSA Document #09-492.

IDEM is requesting public comment on specific citations or changes to Article 2 rule language that should be included in this rulemaking. All comments submitted during this comment period will be considered during the workgroup process and will assist the department in determining whether the issues raised would be best addressed in this rulemaking or the long-term Article 2 rulemaking (LSA Document #09-492).

This rulemaking could potentially impact anyone required to obtain an air permit in Indiana. Both the regulated community and the public will benefit from the clarifications and corrections to be made by providing language that is easier to understand. IDEM seeks comment on the affected citation listed and any other

provisions of Title 326 that may be affected by this rulemaking.

Alternatives to Be Considered Within the Rulemaking

Alternative 1. Amend [326 IAC 2](#) and any other provisions in Title 326 in order to correct, clarify, add, delete, or address consistency issues with existing rule language.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend [326 IAC 2](#).

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Applicable Federal Law

40 CFR 51 (Requirements for Preparations, Adoption, and Submittal of Implementation Plans); 40 CFR 52 (Approval and Promulgation of Implementation Plans); 40 CFR 60 (Standards of Performance for New Stationary Sources); 40 CFR 61 (National Emission Standards of Hazardous Air Pollutants); 40 CFR 63 (National Emission Standards of Hazardous Air Pollutants for Source Categories); 40 CFR 70 (State Operating Permit Programs).

Potential Fiscal Impact

Potential Fiscal Impact of Alternative 1. IDEM expects an insignificant fiscal impact for this alternative. This alternative is not expected to impose any new requirements.

Potential Fiscal Impact of Alternative 2. There would be no fiscal impact because no changes would be made to the existing rule.

Small Business Assistance Information

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface
IDEM Compliance and Technical Assistance Program - OPPTA
MC 60-04 - IGCS W041
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

The Small Business Assistance Program Ombudsman is:

Brad Baughn
IDEM Small Business Assistance Program Ombudsman
MC 50-01 - IGCN 1307
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-3386
bbaughn@idem.in.gov

Public Participation and Workgroup Information

IDEM is establishing a workgroup for this rulemaking. The first workgroup meeting is scheduled for September 16, 2009, at 1:00 p.m., at the Indiana Government Center South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana. If you wish to provide comments to the workgroup on the rulemaking, attend meetings, or have suggestions related to the workgroup process, please contact Amy Smith, Rules Development Branch, Office of Legal Counsel at (317) 233-8628 or (800) 451-6027 (in Indiana) or e-mail at asmith@idem.in.gov. Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted. The public is also encouraged to submit comments and questions to members of the workgroup who represent their particular interests in the rulemaking.

STATUTORY AND REGULATORY REQUIREMENTS

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.

- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#09-493(APCB) Article 2 Initiative: Near-Term
Amy Smith Mail Code 61-49
c/o Administrative Assistant
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the thirteenth floor east reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 233-8903.

COMMENT PERIOD DEADLINE

Comments must be postmarked, faxed, or hand delivered by August 21, 2009.

Additional information regarding this action may be obtained from Amy Smith, Rules Development Branch, Office of Legal Counsel, (317) 233-8628 or (800) 451-6027 (in Indiana).

Nancy King, Chief
Rules Development Branch
Office of Legal Counsel

Posted: 07/22/2009 by Legislative Services Agency
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